

NOTICE OF DECISION
ON APPLICATION TO DRAIN NO. 4630
HOBART LAKE OUTLET PROJECT

TAKE NOTICE that Application to Drain No. 4630, submitted by the Barnes County Water Resource Board for the Hobart Lake Outlet, was conditionally approved by the State Engineer on September 17, 2015. The project consists of construction of approximately three-quarters of a mile of buried, 24-inch diameter HDPE pipe and over a half-mile of channel improvements to remove excess water from Hobart Lake, with the drain outlet discharging into an unnamed watercourse in the NW ¼ SW ¼, Section 24, Hobart Township. Operation of the project will be regulated by combination of a control structure and the Operation and Maintenance (O&M) Plan to avoid any adverse flooding impacts during the times of seasonal flooding, and on the allowable water quality standards in the Sheyenne River.

The State Engineer's decision may be viewed at the Office of the State Engineer, 900 East Boulevard Ave., Bismarck, ND 58505 or on the State Engineer's website at www.swc.nd.gov. A copy may also be requested by writing to the above address or by emailing MNangare@nd.gov.

A hearing may be requested within thirty days of the date of service of the State Engineer's decision. A valid request for a hearing must be received in writing by November 26, 2015; must specifically state facts from which it is evident the person requesting the hearing is factually aggrieved by the State Engineer's decision; and must state what material facts or conclusions are believed to be erroneous and why they are believed to be erroneous (North Dakota Administrative Code § 89-02-01-09.6).

Dated October 26, 2015.



Todd Sando, P.E.
North Dakota State Engineer

STATE OF NORTH DAKOTA
OFFICE OF THE STATE ENGINEER

IN THE MATTER OF:

Application to Drain No. 4630
Barnes County Water Resource
Board

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)
)
)
)

**AFFIDAVIT OF SERVICE
BY REGULAR MAIL**

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF BURLEIGH)

Patrice Hess, states under oath as follows:

1. I swear and affirm upon penalty of perjury that the statements made in this affidavit are true and correct.

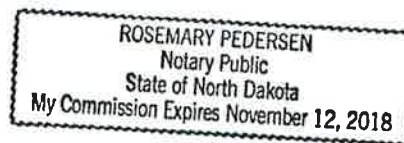
2. I am of legal age and on October 28, 2015, I served the NOTICE OF DECISION ON DRAIN NO. 4630 by placing a copy in first-class, regular mail, as shown on the attached APPENDIX A.



Patrice Hess

Subscribed and sworn to before me this 28th day of October 2015.


Notary Public



Todd Sando
North Dakota State Engineer
900 East Boulevard Ave., Dept. 770
Bismarck, ND 58505-0850

Dwight Comfort
North Dakota State Engineer's Office
900 East Boulevard Ave., Dept. 770
Bismarck, ND 58505-0850

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Fargo, ND 58103

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Peter Wax
North Dakota Department of Health
600 East Boulevard Avenue
Bismarck, ND 58505-0200

North Dakota Department of Health
600 East Boulevard Avenue
Bismarck, ND 58505-0200

North Dakota Game and Fish Dept.
100 North Bismarck Expressway
Bismarck, ND 58501-5095

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Barnes County Water
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Valley City, ND 58072-9534

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Barnes County Water
Resource District
11223 - 35th Street SE
Valley City, ND 58072

Shawn Olauson
Barnes County Water
Resource District
12538 - 41st Street SE
Valley City, ND 58072-9313

Bret Fehr
Barnes County Water
Resource District
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Wimbledon, ND 58492-9511

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Barnes County Water
Resource District
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Barnes County Commissioner
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Valley City, ND 58072

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Fargo, ND 58102

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Valley City, ND 58072

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Valley City, ND 58072

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11346 Cooks Plaza
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Valley City, ND 58072-9445

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Valley City, ND 58072

KD Farms, Inc.
3434 - 114th Ave SE
Valley City, ND 58072-9428

Richard E. Monson and Karen Monson
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Valley City, ND 58072

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Glen Torgerson
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Jason T. Sjostrom
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Fargo, ND 58104

Jeff Lewis
Red River Basin Commission
1120 - 28th Avenue North, STE C
Fargo, ND 58102

interoffice MEMORANDUM

To:  Todd Sando, P.E., State Engineer
John Paczkowski P.E., Director, Regulatory Division

From: ~~MAN~~ Mandar Nangare, MS, CFM, Water Resource Engineer

Subject: Application for Surface Drain No. 4630, Hobart Lake Outlet Project

Date: September 9, 2015

The Barnes County Water Resource Board (Board) submitted Application for Surface Drain No. 4630 on October 20, 2014 to the Office of the State Engineer (OSE). The proposed drainage project will consist of construction of a surface drain (Project) from Hobart Lake, located approximately 5 miles west of Valley City in east-central Barnes County. The flooding of this lake has caused issues with area roads as well as with homes and businesses near the lake. Specifically, the improvements are proposed within the Township 140N, Range 59W in Sections 22, 23, and 24, with the drain outlet discharging into an unnamed watercourse in the NW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 24, Hobart Township. Pursuant to North Dakota Century Code (N.D.C.C.) § 61-32-03 and utilizing the criteria from North Dakota Administrative Code (N.D.A.C.) § 89-02-01-09 (6), the Project was determined to be of statewide significance. N.D.A.C. § 89-02-01-09 (6) was utilized as criteria for determining this project of statewide or interdistrict significance due to the poor water quality in Hobart Lake potentially having an adverse impact on the water quality of Sheyenne River as well as the operation of existing permitted facilities downstream of the project. This, in turn, may also affect the operation of the Devils Lake Outlet projects. The Board was notified of this decision via a letter dated December 12, 2014.

Pursuant to N.D.A.C. § 89-02-01-09.1 (1.a), the Board and the Red River Joint Water Resource District, with OSE staff present, held the required statewide or interdistrict significance hearing on February 23, 2015, at the Barnes County Highway Department in Valley City, ND. Oral comments were received from the area landowners and Mr. Greg Link from North Dakota Game and Fish Department. None of the attendees expressed any objection towards the Project. On April 13, 2015 the Board issued its order approving Application for Surface Drain No. 4630 and sent it to the State Engineer for consideration on May 1, 2015.

The State Engineer must give final approval to applications proposing drainage of statewide or interdistrict significance. N.D.A.C. § 89-02-01-09.4 states that, *In the state engineer's evaluation of statewide or interdistrict significance applications, the state engineer must use all relevant documentary information submitted and oral testimony given for the board's consideration at its meeting. The state engineer may use any information in the files and records retained by the state engineer's office or engineering information developed or obtained through investigation of the project area by the state engineer's staff. The state engineer may also request information*

or comment from independent sources, but is not required to delay the decision for more than thirty days from the date of request while waiting for comment from these sources. All information used must be relevant and is part of the record.

N.D.A.C. § 89-02-01-09.2 lists the factors the Board must consider in the analysis of all applications to drain and the State Engineer for those permits determined to be of statewide or interdistrict significance. These factors are as follows:

1. The water volume proposed to be drained and its impact upon the watercourse into which it will be drained.
2. Adverse effects that may occur to downstream landowners. This factor is limited to the project's hydrologic effects, such as erosion, flood duration, sustained flows impacts, and downstream water control device operation impacts.
3. The engineering design and other physical aspects of the drain.
4. The projects impact on flooding problems in the project watershed.
5. The project's impacts on ponds, sloughs, streams, or lakes having recognized fish and wildlife values.
6. The project's impacts on agricultural lands.
7. Whether easements are required.
8. Other factors unique to the project.

The first factor deals with the volume of water to be drained and the impact upon the watercourse into which it will be drained. The project involves lowering the elevation of Hobart Lake by approximately five feet to an elevation of 1,414 feet (NAVD88). The total volume of water to be removed from the lake is approximately 8,240 acre-feet. The lake will be lowered by the combination of a control gate, buried pipe, and a trapezoidal open channel connecting the lake to its natural outlet into Sheyenne River. Hobart Lake has poor water quality in terms of Sulphates and Chloride. Valley City Water Treatment Plant (WTP) and Wastewater Treatment Plant (WWTP), Lisbon WWTP, West Fargo WWTP and, Fargo WTP are the facilities on the Sheyenne River, downstream of the project, that are already permitted to discharge impaired water into the river. Similarly, Hillsboro WTP, Grand Forks WWTP, American Crystal Sugar WWTP and Drayton WWTP are permitted facilities on the Red River, downstream from its confluence with the Sheyenne River. The North Dakota Department of Health (NDDOH) has previously permitted these facilities under the National Pollution Discharge Elimination System (NPDES) permits. According to N.D.C.C. § 33-16-02.1-08, the water quality limit in the Sheyenne River below the Baldhill Dam is 450 mg/L for sulphates and 175 mg/L for chloride. Allowing the operation of this project without a monitoring plan has the potential to adversely impact the water quality of Sheyenne River, and also affect the operation of Devil's Lake Outlet project. In his letter to the Board, dated May 14, 2015, Mr. Peter Wax of the NDDOH recommended that an Adaptive Operational Plan (AOP) be developed and implemented to ensure that the operation of this project would not violate the water quality standards of Sheyenne River. The OSE staff requested a copy of the draft operational plan from the Board via a letter dated July 9, 2015. The Board's engineer – Mr. Joshua Hassel with Moore Engineering – submitted a draft Operation and Maintenance (O&M) Plan for the Project on July 16, 2015. The draft O&M Plan proposes water quality testing in the Sheyenne River on a monthly basis for the first two years of operation of the project. The Plan recommends the control gate to be closed on following occasions:

Application for Surface Drain No. 4630

- i. Prior to March 1st of each year in anticipation of spring flood event,
- ii. the concentrations in the Sheyenne River exceed acceptable limits per the Water Quality Study, and
- iii. three days prior to discharge from the Valley City Wastewater Treatment Plant (WWTP). The District shall request notification from the WWTP to be notified two weeks in advance of discharge.

A condition will be included in the permit requiring the applicant to obtain the approval of the final O&M Plan from the OSE and NDDOH prior to the beginning of construction. A condition will also be included requiring the Board to formally adopt the finalized version of the O&M Plan.

The second factor to be considered is the adverse effects that may occur to the downstream landowners. This factor is limited to the Project's hydrologic effects such as erosion, duration of floods, impacts of sustained flows, and impact on the operation of downstream water control devices. The OSE staff conducted a field visit to the project site on October 30, 2014 which indicated that water from Hobart Lake has historically flowed into the unnamed watercourse the project will discharge into. Moore Engineering's Mike Opat and Joshua Hassel confirmed this fact. Flood events that occurred in the spring of 2009 and in the summer of 2011 caused the lake to rise affecting the nearby grain elevator and inundating adjacent farmland. Hobart Lake currently flows in an uncontrolled manner. The Project will allow the outflow from Hobart Lake into its natural outfall by way of a controlled outlet. This will protect the nearby properties as well as County Highway 22 from frequent inundation due to the flooding effects of Hobart Lake.

The third factor is the engineering design and other physical aspects of the drain. The objective of this project is to lower Hobart Lake by approximately five feet to an elevation of 1,414 feet (NAVD88). The Project will include approximately three-quarters of a mile of buried, 24-inch diameter HDPE pipe and over a half-mile of channel improvements. The lake will be connected to the buried pipe by a 90 feet long, 24-inch diameter smooth wall steel pipe. The outlet will begin in the NE ¼ of Section 22 and then continue northeast into the NW ¼ of Section 23. The Project will then continue east into the NE ¼ of Section 23 where it will turn southeast and tie into an existing natural channel which is the lake's natural outlet. Channel improvements will continue along the natural channel for approximately three quarters of a mile and conclude in the SW ¼ of Section 24. Improvements to the channel will include an 8-foot bottom width and side slopes of 4H:1V. Seeding will be utilized in conjunction with riprap and a filter blanket for erosion protection. The Project will also include improvements to downstream road crossings to accommodate the additional flow from the outlet. These improvements consist of increasing the capacity of existing culvert crossings by the addition of one 24-inch diameter smooth steel pipe culvert at each crossing. The upstream and downstream invert of the new culvert will match that of the existing culvert. A control structure and the O&M Plan will limit operation of the Project and avoid any adverse flooding impacts during times of seasonal flooding downstream along the natural outlet and on the Sheyenne River.

The fourth factor to be considered is the Project's impact on flooding problems in the project watershed. The purpose of the Project is to lower the elevation of Hobart Lake by approximately five feet, so as to reduce flood damage to agricultural, residential, and commercial properties, as well as to County Highway 22. The addition of an outlet control structure for this

project will greatly reduce the potential for an uncontrolled natural overflow from the lake. Increasing the capacity of existing culvert crossings will improve the natural drainage along the watercourse the project will discharge into.

The fifth factor deals with the Project's impacts on ponds, sloughs, or lakes having recognized fish and wildlife values. Though a large portion of the Hobart Lake is designated as a National Wildlife Refuge, on January 15, 2013, the Board received a letter from the US Department of Interior (Fish & Wildlife Service) indicating that lowering the lake to the proposed elevation does not appear to have any adverse impact to the wildlife refuge or fish habitat. Mr. Greg Link of the North Dakota Game and Fish Department orally expressed his concerns during the statewide or interdistrict significance hearing of the Project on February 23, 2015. According to Mr. Link, an elevation lower than 1,414 ft (NAVD) may diminish the fishery potential and value of Hobart Lake. A condition will be added to the permit that the lake elevation not be lowered below 1,414 ft (NAVD88).

The sixth factor is the Project's impact on agricultural land. Lowering the lake elevation by approximately five feet will thereby reduce the likelihood of frequent flooding of adjacent farmland that has historically occurred within the area. If the Project is constructed and operated properly, agricultural land downstream would not be adversely impacted since the operating discharges for the Project at any time will be no more than 10 cfs. Overall, the Project would have a beneficial effect on agricultural land as well as the grain elevators located within the vicinity.

The seventh factor to be considered is whether easements are required. The Project will include approximately three-quarters of a mile of buried, 24-inch diameter HDPE pipe, and over a half-mile of channel improvements. The majority of the project will be located on private property. North Dakota Century Code (N.D.C.C.) 61-32-03 states that, *If the investigation shows that the proposed drainage will flood or adversely affect lands of downstream landowners, the water resource board may not issue a permit until flowage easements are obtained. The flowage easements must be filed for record in the office of the recorder of the county or counties in which the lands are situated. An owner of land proposing to drain shall undertake and agree to pay the expenses incurred in making the required investigation.* The design features such as the control gate, engineered channel, buried pipe, increased conveyance through the downstream road crossings by way of installation of additional culverts, and the proposed O&M Plan will ensure that downstream properties will not be adversely impacted due to the operation of the Project. In this case, flowage easements will not be required. The Board intends to obtain easements for the construction and operation of the project. Funding for the Project is being secured through the Federal Emergency Management Agency's (FEMA) Hazard Mitigation Grant Program (HMGP). One of the conditions set forth by FEMA for such a grant is that the applicant has secured the necessary land rights for the project before construction begins. Therefore, a condition will be included on the drain permit stipulating that the Board must have property rights to the land on which the Project will be located prior to commencement of construction.

The eighth and final item to be considered is other factors unique to the Project. Additional information is still required before the State Engineer can give final approval to the Application for Surface Drain No. 4630. The application material does not include design features for the proposed control gate. The control gate is a critical element of the hydraulic system designed to lower the elevation of Hobart Lake. Similarly, the O&M Plan has not been finalized yet. There

Application for Surface Drain No. 4630

are several items associated with the operation and maintenance of the Project which need to be finalized. The size, type, and operation of the control gate will be greatly influenced by the final and approved O&M Plan. As explained earlier, North Dakota Game and Fish Department has orally expressed concerns that lowering of the lake below the elevation of 1,414 feet (NAVD88) may diminish the fishery potential and value of Hobart Lake. Therefore, conditions will be added to the permit as necessary to ensure that all concerns and issues are addressed before the Project is implemented. The following is a compilation of information still needed and issues yet to be addressed:

1. The Board must obtain land rights from the landowners for the construction of the Project.
2. The draft O&M Plan for the Project must be finalized and formally adopted by the Board. In addition, the Board must obtain approval from the OSE and NDDOH on the finalized O&M Plan before construction begins.
3. Final Design Plans must be submitted to and approved by the OSE prior to construction.

In reviewing this application, all known information given for the Board's consideration, including written and oral testimony from the hearing, and information in the permit application file was considered. Additional information obtained from Moore Engineering, the Board's engineer, was also considered. Conditions have been added to address the information still needed for Application for Surface Drain No. 4630 by the State Engineer. Based on the information provided in the Application, and my review of the project, I recommend the State Engineer conditionally approve Application for Surface Drain No. 4630 subject to the conditions stated in the permit

MAN\1054



APPLICATION FOR SURFACE DRAIN
OFFICE OF THE STATE ENGINEER
Water Development Division
SFN 2830 (8/11)



I, the undersigned, am applying for a permit under NDCC Section 61-32-03, to drain a pond, slough, lake, or sheetwater, or any series thereof, which has a watershed area comprising 80 acres or more.

No. **4630**
(OSE USE ONLY)

This application must be accompanied by FSA aerial photos or equivalent showing the location of the proposed drain(s).

(1) WATER RESOURCE DISTRICT IN WHICH PROJECT IS LOCATED: Barnes County Water Resource District				
(2) LEGAL DESCRIPTION - DRAIN CENTERLINE: [use separate sheet(s) if necessary]	NE 1/4 NE 1/4	SECTION 22	TOWNSHIP 140N	RANGE 59W
	1/4 NW	SECTION 23	TOWNSHIP 140N	RANGE 59W
	E 1/2	SECTION 23	TOWNSHIP 140N	RANGE 59W
(3) LEGAL DESCRIPTION - DRAIN OUTLET:	1/4 NW 1/4 SW	SECTION 24	TOWNSHIP 140N	RANGE 59W
(4) PURPOSE: Create a controlled outlet for Hobart Lake				
(5) Drain Method: <input type="checkbox"/> Pumping <input type="checkbox"/> Filling <input checked="" type="checkbox"/> Gravity				
(6) DESCRIPTION OF AREA TO BE DRAINED:				
TOTAL Drainage Area 15,000 Acres		Project Drainage Area 15,000 Acres		
Water Area 1877.5 Acres		Average Depth of Water 4 Feet		
(7) DESCRIPTION OF DRAIN:				
Pumping Rate (if applicable) N/A gpm N/A cfs		Fill Volume (if applicable) N/A cubic yards		Bottom Width (B) 10 Feet
TOTAL Length of Drain 8,000 Feet		Length of Drain Project 8,000 Feet		Side Slopes (S) 4 :1 Foot
(8) Anticipated completion date: Fall 2015		(9) Assessment drain? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		Maximum Cut (D) 4 Feet
(10) Do you own the land to be drained in fee? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO If NO, give the name and address of the legal landowner(s): Deeds and Easements will be purchased prior to construction.				

The filing of this application and its approval does not relieve the applicant and/or landowner(s) from any responsibility or liability for damages resulting from the construction, operation or failure of this drain.

APPLICANT'S CERTIFICATION

I understand that I must undertake and agree to pay the expense incurred in making an investigation. If the investigation discloses that the quantity of water to be drained will flood or adversely affect downstream lands, I will be required to obtain flowage easements and must file the easements in the office of the county recorder before a permit may be issued. My signature below acknowledges that I have read and agree to these statements, and will adhere to the conditions given on the back of this application.

NAME (PRINT OR TYPE): Barnes County Water Resource District	DATE SUBMITTED: 10-13-14
ADDRESS: 1525 12th St. NW	PHONE NO: 701-845-8508
CITY, STATE, ZIP CODE: Valley City, ND 58072	
SIGNATURE (Owner of the land on which the project is located or legal entity sponsoring project): 	

FOR USE BY WATER RESOURCE DISTRICT AND STATE ENGINEER

☒ The Water Resource District Board has investigated according to NDAC Section 89-02-01-09.2.

☒ The proposed drainage (☐ will ☒ will not) flood or adversely affect lands of downstream landowners.

This application is hereby:

☐ Denied

Signature: _____

Linda B. Kenna
Chairman or Secretary of Water Resource District Board

☒ Approved

Date: _____

4-13-15

(1) The State Engineer or Water Resource District Board may revoke or modify the project and the rights granted under the permit to protect the public health, safety, and welfare; to protect property; or to ensure the orderly control of water resources.

(2) Construction must be completed within two years from the date of final approval.

(3) See additional conditions contained in the District's Order dated April 13, 2015.

This application:



does involve drainage of state-wide or interdistrict significance *MAN 12/12/2014*

☐ does not involve drainage of state-wide or interdistrict significance

If the State Engineer has determined that this application does not involve drainage of state-wide or interdistrict significance, approval by the Water Resource District Board constitutes a permit to drain.

If the State Engineer has determined that this application involves drainage of state-wide or interdistrict significance, approval by both the Water Resource District Board and the State Engineer must be given to constitute a permit to drain.

This application involving drainage of state-wide or interdistrict significance is:

☐ Denied

Signature: _____

Todd Sandoz
State Engineer



Approved

Date: _____

9/17/15

CONDITIONS:

(1) The State Engineer may revoke or modify the project and the rights granted under the permit to protect the public health, safety, and welfare; to protect property; or to ensure the orderly control of water resources.

(2) Construction must be completed within two years from the date of final approval.

Mail to:

Office of the State Engineer
900 East Boulevard Avenue, Dept 770
Bismarck, ND 58505

Conditions to Drain Application #4630

89-02-01-09.11. Conditions to permits - Extending time to complete project.

Unless otherwise specifically stated:

1. All permits must include the following conditions:
 - a. The project and the rights granted under the permit are subject to modification to protect the public health, safety, and welfare.
 - b. That construction must be completed within two years from the date of final approval.
2. All permits of statewide or interdistrict significance must include the following conditions:
 - a. All highly erodible drainage channels must be seeded to a sod-forming grass.
 - b. The vegetative cover must be adequately maintained for the life of the project or control structures must be installed, or a combination of these two criteria.
3. A permit may be extended beyond two years for good cause shown. If the permit was not of statewide or interdistrict significance when it was originally approved, a request for an extension must be approved or disapproved by the board. If the permit was of statewide or interdistrict significance when it was originally approved, a request for an extension must be approved or disapproved by the state engineer. No extension may exceed two years.

The state engineer or the board may attach other conditions to the permit if deemed necessary.

History: Effective February 1, 1997; amended effective April 1, 2000.

General Authority: N.D.C.C. 28-32-02, 61-03-13

Law Implemented: N.D.C.C. 61-15-08, 61-32-03

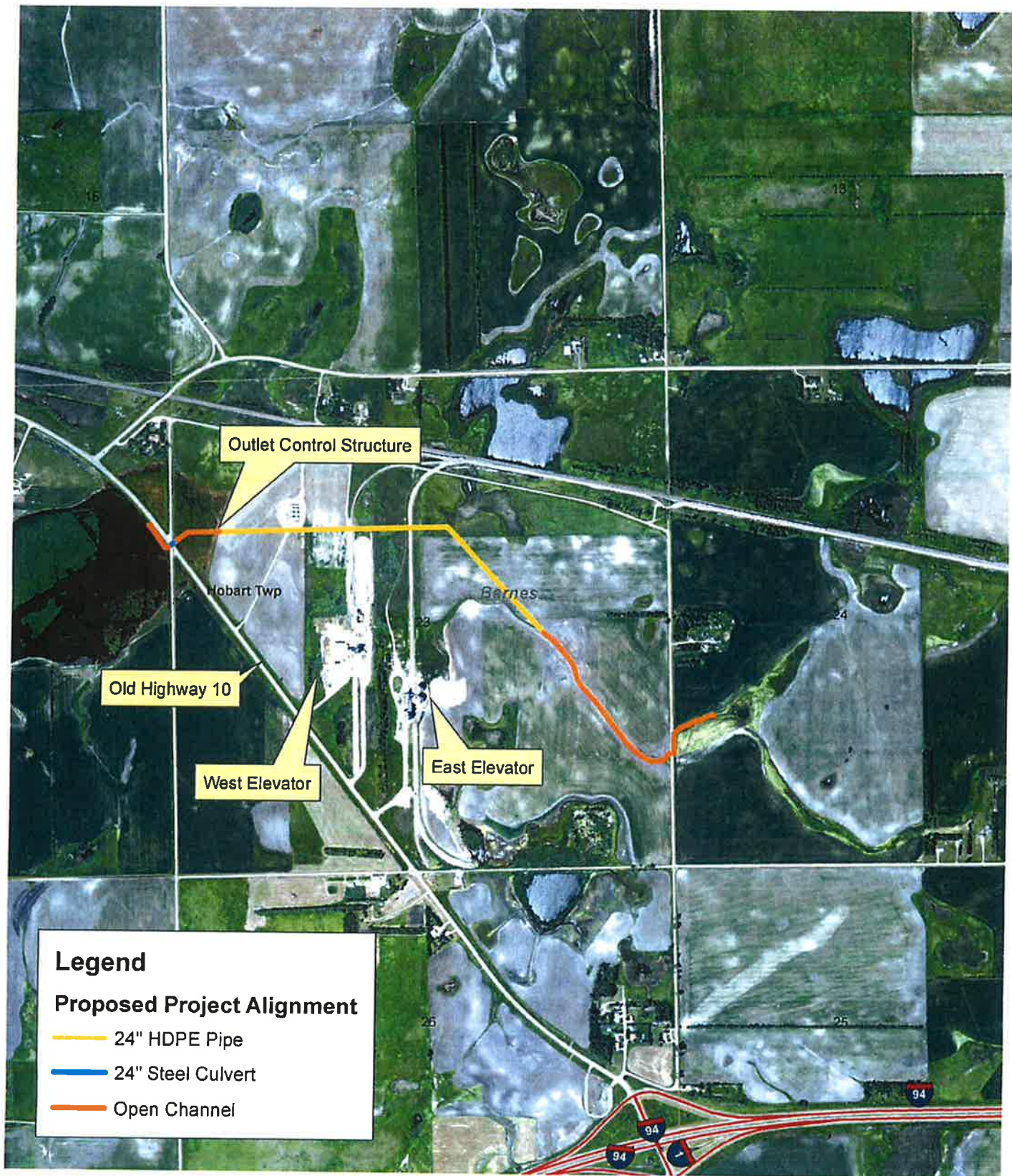
Additional Conditions

4. The permit authorizes the permit holder to drain water from Hobart Lake at a rate not to exceed 10 cfs. Expansion of the project's capacity would require a new permit.
5. At the discretion of the State Engineer, in accordance with the exercise of his duties, the project is subject to modification at the expense of the owner.
6. The Board will not operate the drain if the resultant discharge will cause either sulphate or chloride concentrations in the Sheyenne River to exceed North Dakota Department of Health standards downstream of the allowable mixing zone. The Board will adhere to NDDOH water quality monitoring requirements.
7. The Board shall submit for approval an Operation and Maintenance Plan (O&M Plan) to the State Engineer and the North Dakota Department of Health prior to operating the drain. The O&M Plan must meet State Engineer approval prior to operating the drain.
8. The Board shall not operate the project when the USGS Gage No. 05058500 on the Sheyenne River at Valley City is at or above flood stage.
9. Permission must be obtained from the road authority prior to performing work within the road right-of-way.
10. Property rights must be obtained from the landowners prior to the construction of the project.
11. Final Design Plans must be submitted to and approved by the State Engineer prior to construction. These plans must include plans and specifications as well as a rating curve for the outlet control structure.
12. The Board is responsible to obtain additional easements, authorizations, or permits as required by local, state, and federal laws.
13. In order to preserve the fishery potential and value of Hobart Lake, drainage is only authorized when the level of the lake is above 1,414 feet (NAVD88).



Todd Sando, P.E.
State Engineer

Date: 9/17/15



MetaData: Supplier
Aerials: 2010 North Dakota County NAIP
GeopoliticalData: North Dakota Hub

Drawn by: JMH
Date: November 28, 2014
MEI Project Number: 16054

Hobart Lake Outlet Alignment Map

moore
engineering, inc.
Shaping the Region for 50 Years.

\\16054\\16054_HobartLakeWatershedMap8.5x11_wetlands.mxd

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